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U.S. Department of Justice
Immigration and Naturalization Service

preval clearly unwarranted
invasion of personal privacy.

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE [REDACTED]
EAC 00 188 51206

Office: Vermont Service Center

Date: MAY 01 2002

IN RE: Petitioner:
Beneficiary:

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(A)(iii)

IN BEHALF OF PETITIONER:

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted, the previous decision of the Associate Commissioner will be withdrawn, and the petition will be approved.

The petitioner is a native and citizen of Mexico who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director denied the petition after determining that the petitioner failed to submit a clearance letter from Zapata, Texas, the city where she claimed to have resided, to establish that she was a person of good moral character pursuant to 8 C.F.R. 204.2(c)(1)(i)(F).

The Associate Commissioner noted that the petitioner furnished, on appeal, a letter from the Zapata County Sheriff's Office indicating that the applicant was arrested and charged with criminal trespass on March 20, 2000. Because the petitioner failed to submit the arrest report and the court record regarding this arrest, the Associate Commissioner concurred with the director's conclusion and denied the petition on June 8, 2001.

On motion, the petitioner states that her mother-in-law falsely advised her that her son was ill and when she went to her house to pick up her son, she called the sheriff's office falsely stating that the petitioner was trespassing. The petitioner submits a copy of the court record reflecting that on April 30, 2001, the County Court of Zapata County, Texas, dismissed the case.

It is concluded that the petitioner has established that she is a person of good moral character and has, therefore, overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(F). The director did not find the petitioner ineligible under any other provisions of 8 C.F.R. 204.2(c).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has met that burden and, therefore, is eligible for the benefit sought.

ORDER: The decision of the Associate Commissioner dated June 8, 2001, is withdrawn. The petition is approved.